II. REMARKS

A. Introductory Remarks

Claims 1-3, 6, 8-14, 17, 19-31 and 33 are pending in this application. Claims 1, 3, 12, and 14 have been amended to more clearly recite the claimed invention. Applicants respectfully request entry of this response and allowance of the claims. No new matter has been added.

B. Substance of In-Person Interview

Applicants thank Examiner Carolyn Paden for courtesies extended during the in-person interview and discussions held on November 19, 2009. The following is Applicant's statement of the substance of those discussions.

Applicants discussed with the Examiner the nature of the rejections over Lin, Bailey and Chen in the non-final Office Action mailed on July 31, 2009. In particular, Applicants proposed amending claim 1 to recite "palm stearin" and omit the recitation "palm oil". Further, Applicants proposed amending the fractionation step (c) by providing temperature points.

In response, the Examiner acknowledged that palm stearin was not disclosed or suggested by the prior art of Lin, Bailey and Chen and that Lin did not recite the successive fractionation at various temperatures. However, the Examiner noted that Applicants had not adequately addressed the previous rejections under 35 U.S.C. § 112, first paragraph regarding the ratio of 1:1:1 of saturated fatty acids, monounsaturated fatty acids and polyunsaturated fatty acids in claim 1. Applicants discussed amending the ratio to recite the specific ratios found in the examples. The Examiner also objected to the use of abbreviations for the various palm oil sources. Applicants indicated that the current response would address this issue and refer to the specification where the abbreviations corresponded with the names of the oils to satisfy the written description requirement.

C. The Rejection Under 35 U.S.C. § 103 Should Be Withdrawn

Claims 1-3, 6, 8-14, 17, 19-31 and 33 are rejected on pages 2-4 of the office action under 35 U.S.C. § 103(a) as allegedly obvious over Lin, *Proceedings of the 1999 International Palm Oil Palm Oil Congress (Chemistry and Technology)*, Feb. 1-6, 1999, 82-93 ("Lin") as evidenced by *Baileys Industrial Oil and Fat Products*, Vol. 1, Fourth Ed., Swern ed., John Wiley & Sons, New York, **1979**, pp. 383, 394, 399, and 430 ("Bailey's") and

further in view of Chen. In light of the amendments to claim 1, Applicants respectfully traverse the rejection for the following reasons.

The U.S. Supreme Court analyzed the test for obviousness in *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007). "There is no necessary inconsistency between the [teaching, suggestion, motivation] test and the Graham analysis. But a court errs where it transforms general principle into a rigid rule limiting the obviousness inquiry." *Id.* The Supreme Court's analysis in *KSR* relies on several assumptions about the prior art landscape. First, *KSR* assumes a starting reference point or points in the art, prior to the time of invention, from which a skilled artisan might identify a problem and pursue potential solutions. Second, *KSR* presupposes that the record up to the time of invention would give some reasons, available within the knowledge of one of skill in the art, to make particular modifications to achieve the claimed compound. *See Takeda*, 492 F.3d at 1357. Third, the Supreme Court's analysis in *KSR* presumes that the record before the time of invention would supply some reasons for narrowing the prior art universe to a "finite number of identified, predictable solutions," *KSR* 127 S. Ct. at 1742. In *Ortho-McNeil Pharmaceutical, Inc. v. Mylan Laboratories, Inc.*, 520 F.3d 1358, 1364 (Fed. Cir. 2008), the Federal Circuit further explained that this "easily traversed, small and finite number of alternatives . . . might support an inference of obviousness." However, to the extent an art is unpredictable, as the chemical arts often are, *KSR's* focus on these "identified, predictable solutions" may present a difficult hurdle because potential solutions are less likely to be genuinely predictable. *Takeda Chemical Industries, LTD et al. v. Alphapharm PTY., Ltd.*, 492 F.3d 1350 (Fed. Cir. 2007). In light of the foregoing decisions, Applicants respectfully traverse the rejection for the following reasons.

To begin with, Applicants have amended claims 1 and 12 to recite " blending palm stearin" and have deleted the recitation of "palm oil" from these claims. Additionally, with respect to claim 1, Applicants have amended step (c) to recite "fractionating the mixture obtained from step (b) at temperatures of 20 °C, 10 °C, and 8 °C successively to provide fraction…". In contrast to the amended claims 1 and 12, Applicants respectfully submit that Lin does not disclose or suggest "palm stearin." Rather, Lin discloses "palm olein" which is obtained from "palm oil." *See*, Lin at page 82. Also, Lin does not disclose or suggest fractionating the use of palm stearin as a starting material in such a blending and fractionation process and does not disclose or suggest fractionating the mixture at three different temperatures of 20 °C, 10 °C, and 8 °C successively including the aspect of heating to melt all

crystals before commencement of fractionation as recited in step (b). Moreover, Lin does not disclose the composition of the end-product, and Applicants reiterate that the ratio of fatty acids in step (d) of pending amended claim 1 (*i.e.*, the end-product) is not a function of the amount of each of the oils used in the starting blend. Based on the composition blends, especially using palm stearin, it would not be possible for a person skilled in the art to calculate the fatty acid ratios that will be obtained after melting the crystals and after subsequent fractionation using the procedure described by Lin. The fatty acids are distributed in the complex mixtures of triacylglycerols, and therefore it would not be predictable as to how the final ratio is attained. Indeed, one of the inventive features of the invention is the ascertainment of the ratios of palm oil/palm stearin to soybean oil in the starting blends to obtain the 0.5 to 1.0:1.0:0.3 to 1.2 ratio of saturated/monounsaturated/polyunsaturated ratio in the end-product. Accordingly, Lin fails to disclose or suggest several elements of amended claims 1 and 12.

Contrary to the assertion in the Office Action, Applicants respectfully submit that Bailey and Chen does not remedy the deficiencies of Lin. Applicants respectfully submit that the claims would not be obvious in light of Lin and/or Bailey in view of Chen. Applicants submit that none of these references discloses blending "palm stearin" with unsaturated oil to prepare a oil composition with a specific ratio of the fatty acids, monounsaturated fatty acids and polyunsaturated fatty acids in a ratio of about 0.5 to 1.0:1.0:0.3 to 1.2. Like Lin, Bailey and Chen disclose "palm oil" but not palm stearin, which has a different composition from palm oil. Indeed, it would not be obvious to a person skilled in the art even after having read Lin, Bailey and Chen that it would be possible to obtain an oil composition as mentioned in claim 1, as amended, by using all the sequence/combination of steps and specific temperature conditions set out in claim 1, as amended, with palm stearin as the starting material.

Moreover, Applicants submit that there is no motivation to combine Lin with Bailey and Chen. There is no rationale or suggestion to a person of ordinary skill in the art to modify Lin to blend "palm stearin" with unsaturated oil and to fractionate the mixture at temperatures of 20 °C, 10 °C and 8 °C successively as recited in amended claim 1. Indeed, Lin does not suggest modifying his method of blending palm stearin with an unsaturated oil. Rather Lin discloses fractionation of palm oil with unsaturated oils such as soyabean, corn and sunflower. *See*, Lin at page 82. Applicants submit that even if Bailey and Chen were combined with Lin, the combination would not achieve the invention as recited in claim 1 in

part because Lin specifically discloses fractionating "palm oil." Accordingly, a person of skill in the art would be motivated to combine "palm oil" with the unsaturated oil.

Moreover, one of skill in the art would have no expectation of success upon modifying Lin to blend "palm stearin" with unsaturated oil and achieve an oil composition with a specific ratio of saturated fatty acids, monounsaturated fatty acids and polyunsaturated fatty acids in a ratio of about 0.5 to 1.0:1.0:0.3 to 1.2 because there is no guidance from the combination of Lin, Bailey and Chen to do so. Absent a reasonable expectation of success based on the combination of Lin with Bailey and Chen, the method of claim 1, as amended, cannot be held obvious in view of the references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Based on at least the above arguments, Applicants respectfully submit that Lin neither teaches nor suggests the novel and unobvious features of the invention of claims 1 and 12, as amended. Even assuming *arguendo* that the Lin is combined with Bailey and Chen, the result would not lead to the invention of amended claims 1 and 12 since they do not disclose or suggest blending "palm stearin" with an unsaturated oil. Accordingly, Applicants respectfully submit that the rejections of claims 1 and 12, and the dependent claims 2-3, 6, 8-11, 13, 14, 17, 19-31 and 33 under 35 U.S.C. § 103(a) should be reconsidered and withdrawn.

D. The Rejections Under 35 U.S.C. § 112, First Paragraph, Should Be Withdrawn

Claims 1-3, 6-14 and 17-28 are rejected on pages 4-5 of the office action under 35 U.S.C. § 112, first paragraph, as lacking enablement for any and all combinations of vegetable oil and unsaturated oil. The Office Action states that the specification does not enable a person of skill in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims.

In response, Applicants have amended claim 1 to recite "wherein said oil composition contains saturated fatty acids, monounsaturated fatty acids and polyunsaturated fatty acids in a ratio of about 0.5 to 1.0:1.0:0.3 to 1.2. This is supported in Example 3, lines 1-7 of the originally filed specification and paragraph [0030] of the published application US 2004/0224071. Therefore, claim 1 as amended is enabled for the specific composition of saturated fatty acids, monounsaturated fatty acids and polyunsaturated fatty acids in the specified ratio based on the description in the specifiaction.

For at least the foregoing reasons, Applicants respectfully submit that the rejection of claims 1-3, 6-14 and 17-28 under 35 U.S.C. § 112, first paragraph, be reconsidered and withdrawn.

E. **The Rejections Under 35 U.S.C. § 112, First Paragraph, Should be Withdrawn**

Claims 1-3, 6, 8-14, 17, 19-31 and 33 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. *See* Office Action at page 5. The Office Action states that Applicants' arguments relating to the meaning of the various palm oil sources was not sufficient to overcome the rejection. See Office Action at page 5.

Applicants submit that one of ordinary skill in the art would readily understand the meanings of the following terms based on the specification at paragraph [0028] and Table 1 of the published application US 2004/0224071. In Table 1, the abbreviations are described as follows:

PO = palm oil
CO = corn oil
SBO = soyabean oil
SFO = sunflower oil
UO = unsaturated oil
SFC = solid fat content
PS = Palm st = Palm stearin

Accordingly, based on the description in the Table, one of skill in the art would readily understand that the abbreviations refer to the For at least the foregoing reasons, Applicants respectfully submit that the rejection of claims 1-3, 6, 8-14, 17, 19-31 under 35 U.S.C. § 112, first paragraph, should be reconsidered and withdrawn.

III. **Conclusion**

It is respectfully submitted that all claims are now in condition for allowance, early notice of which would be appreciated. Should the Examiner disagree, Applicants respectfully request a telephonic or in-person interview with the undersigned attorney to discuss any remaining issues and to expedite the eventual allowance of the claims.

No additional fees are believed to be due, other than the separately filed three-month extension fee. Except for issues payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310.

Respectfully submitted,

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